

# ARKANSAS HAZARDOUS WASTE FACILITY SITING PROVISIONS

## Topics

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## Relevant Statutes and Regulations:

- G The Arkansas Code of 1987 Annotated (A.C.A.), 1997 Replacement, "The Arkansas Environmental Equity Act", Title 8, Chapter 6, Subchapter 15 (Siting High Impact Solid Waste Management Facilities).
- G The Arkansas Code of 1987 Annotated (A.C.A.), 1997 Replacement, "The Arkansas Hazardous Waste Management Act", Title 8, Chapter 7, Subchapter 2 (Hazardous Waste Management Act).
- G [http://www.arkleg.state.ar.us/data/ar\\_code.htm](http://www.arkleg.state.ar.us/data/ar_code.htm) contains Arkansas Code
- G The Arkansas Department of Pollution Control & Ecology (ADPC&E) Regulation No. 23 (Hazardous Waste Management).
- G The Arkansas Department of Pollution Control & Ecology (ADPC&E) Regulation No. 8 (Administrative Procedures).
- G <http://www.adeg.state.ar.us/regs/regsmain.htm> contains Arkansas Regulations

## Other Relevant State Documents:

- G The Arkansas Hazardous Waste Management Program Description, ADPC&E.

## Arkansas Hazardous Waste Facility Siting Provisions

### Web Address for the State Environmental Agency:

- G <http://www.adeq.state.ar.us/>  
G The web site lists agency contacts who can assist in determining the current siting requirements.

### Affected Facilities:

- G Arkansas' hazardous waste management facility location standards are applicable to:  
! new hazardous waste management facilities (the restrictions do not apply to facilities which began operations prior to March 14, 1979, or which had an existing operating permit issued by ADPC&E, or to any subsequent modifications to such facilities) [ADPC&E Reg. No. 23, §264.18(i); Program Description, p. 23]  
Note: While existing facilities are not precluded from operating because of a siting restriction, they must still consider the requirements and demonstrate that no significant risk or adverse effects will occur because they may be located inside one of the restricted areas.  
! commercial hazardous waste management facilities
- G The "Arkansas Environmental Equity Act" is applicable only to:  
! high impact solid waste facilities

### Definitions of Facility Types:

- G **New hazardous waste management facility or new facility** means a facility which began operation, or for which construction commenced, after October 21, 1976. [ADPC&E Reg. No 23, Chapter 2, §260.10]
- G **Commercial hazardous waste management facility** means a hazardous waste management facility that is not a noncommercial facility. **Noncommercial hazardous waste facility** means a hazardous waste management facility that is constructed and operated to store, treat, and/or dispose of hazardous waste which has been generated by the owners or operators of said facility and at which storage, treatment or disposal is not undertaken for profit. A noncommercial hazardous waste facility may accept, at cost or profit, hazardous waste which has been generated by persons other than the owners or operators of said facility, provided that the total amount of such wastes does not exceed 5 (five) percent of the facility's annual operating capacity and provided that the permit for said facility authorizes the acceptance of such waste for storage, treatment, and/or disposal. [ADPC&E Reg. No 23, Chapter 2, §260.10]
- G A **high impact solid waste management facility** shall mean, excluding the facilities described below, any solid waste landfill, any solid or commercial hazardous waste incinerator, and any commercial hazardous waste treatment, storage, or disposal facility; the term "high impact solid waste facility" shall not

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include the following:

- a. recycling or composting facilities;
- b. waste tire management sites;
- c. solid waste transfer stations;
- d. solid waste landfills which have pending applications;
- e. a facility dedicated solely to the treatment, storage, disposal of solid or hazardous wastes generated by a private industry;
- f. a facility or activity dedicated solely to a response action at a location listed by the State or Federal government as a hazardous substance site;
- g. an existing facility with interim status; or
- h. expansion of existing hazardous waste facilities either through increased acreage or additional services or through increased capacity. [A.C.A. §8-6-1502]

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<b>ADMINISTRATION</b>			
<b>STATE ADMINISTERING AGENCY</b>			
Arkansas Pollution Control & Ecology Commission	NA	[8-1-203]	The <b>Pollution Control &amp; Ecology Commission</b> has the authority to promulgate rules and regulations to implement the statutes charged to ADPC&E for administration.
	PDP	[8-1-203]	This commission also reviews appeals on permitting decisions made by the Director and makes the final agency action for the purposes of an appeal. Its members are appointed by the Governor. The current commission can be found at <a href="http://www.adeq.state.ar.us/commission/main.htm">http://www.adeq.state.ar.us/commission/main.htm</a> .
Arkansas Department of Environmental Quality (ADEQ or the Department)	PPA PA PDP	[8-7-202; 8-7-208(a)]	The <b>Arkansas Department of Environmental Quality (ADEQ or the Department)</b> is the official agency for the State for all purposes of implementing RCRA and other State or Federal legislation in the management of hazardous wastes.
Appointment of structure of ADEQ	PPA PA PDP	[8-1-202]	<b>The ADEQ is headed by a Director who is appointed by the Governor and serves at the pleasure of the Governor.</b> This Director is the executive officer whose duties include the administration of permitting, licensing, certification, grants programs, and enforcement.
Powers and duties of the ADEQ /Department	PPA PA PDP	[8-7-209(a), (a)(1), (a)(3)(A)&(B); 8-7-212]	<b>The Department has the authority to administer and enforce a hazardous waste management program</b> including establishing the criteria for the identification of locations within the State that are suitable sites for the treatment, storage, or disposal of hazardous waste, as well as identifying those locations that are not suitable. This <b>Department may adopt and give appropriate effect</b> to variations within the State in climate, geology, population density, and other relevant factors <b>in the siting of permitted facilities.</b>

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The Hazardous Waste Division of ADEQ	PPA PA PDP	Program Description, "Program Overview", p. 1	The <b>Hazardous Waste Division of ADEQ</b> administers the State's hazardous waste management program with the primary responsibility within the Department for administering permitting and enforcement.
<b>THE INTERAGENCY COORDINATING COUNCIL</b>			
No provisions found			
<b>INDEPENDENT SITING BOARD</b>			
No provisions found			

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<b>LOCAL COMMUNITY NEEDS AND INVOLVEMENT</b>			
<b>LOCAL REVIEW/INVOLVEMENT</b>			
Local review for siting a high impact solid waste management facility	NA	<i>[8-6-1503]</i>	With respect to the <b>siting of high impact solid waste management facilities, the affected local and regional authorities shall issue a definitive finding</b> with regards to the siting criteria set out in <i>8-6-1504</i> . This applies to Subtitle D facilities only; local governments are prohibited from enacting or enforcing restrictions against Subtitle C facilities. Siting restrictions for Subtitle C are not delegated below state level.
<b>OTHER AGENCY OR GOVERNMENTAL ENTITY INVOLVEMENT</b>			
No provisions found			
<b>COMPATIBILITY OF FACILITY SITE WITH LOCAL SOLID WASTE MANAGEMENT PLANS</b>			
No provisions found			

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<b>PUBLIC PARTICIPATION</b>			
<b>The federal regulations regarding the public participation process for the permitting of hazardous waste (RCRA) facilities can be viewed at <a href="http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf">http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf</a> within the Part 124 Procedures for Decisionmaking. (State regulations cannot be less stringent than the federal counterparts.)</b>			
Note: At Reg. No. 23 §3 Arkansas incorporates by reference the Part 124, Subpart A provisions that are applicable to authorized States. In addition to these provisions, the State has adopted general permitting requirements applicable to new hazardous waste facilities and commercial hazardous waste facilities in Arkansas.			
<b>NOTIFICATION</b>			
Permit application notification to the public	PA	Reg. No. 23 §270.7(h)	<p><b>Any person who submits an application</b> for a new or existing hazardous waste management facility permit <b>shall give notice to the public</b> by publishing the notice in the newspaper having the largest circulation that is published within the county where the facility is located or proposed to be located, as well as publishing a notice in the newspapers having the largest circulation published within each county adjoining the affected county. The notice shall contain the following information:</p> <ul style="list-style-type: none"> <li>- the name, title, and address of the applicant;</li> <li>- the location of the unit and/or facility, including a description of the boundaries;</li> <li>- the nature of the facility and a brief description of how the waste is to be stored, treated, or disposed; and</li> <li>- the type of hazardous waste to be managed at the unit and/or the facility.</li> </ul> <p>Proof of publication must be submitted to the Department within 30 days of submission of application.</p>

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Permit application notification to all landholders and tenants of property contiguous to the proposed or existing facility	PA	Reg. No. 23 §270.7(i)	<p><b>Any person who submits an application</b> for a new or existing hazardous waste management facility permit <b>shall provide written notice</b> sent by certified mail (return receipt requested) <b>to all landholders and tenants</b> of property contiguous to the proposed or existing facility. This notice shall contain the following information:</p> <ul style="list-style-type: none"> <li>- the name, title, and address of the applicant;</li> <li>- the location of the unit and/or facility, including a description of the boundaries;</li> <li>- the nature of the facility and a brief description of how the waste is to be stored, treated, or disposed; and</li> <li>- the type of hazardous waste to be managed at the unit and/or facility.</li> </ul> <p>Documentation of good-faith efforts to identify all such contiguous landholders and tenants and proof of notification must be submitted to the Department within 30 days of the submission of application.</p>
Notice that a permit application is administratively complete	PA	Reg. No 8 §2.1.4; Program Description, "The Permit Process", p. 57	When <b>the Hazardous Waste Division of ADCP&amp;E</b> determines that the permit application is administratively complete, the Division <b>shall prepare and send the notice</b> for publication to the applicant <b>and shall direct the applicant to cause such notice to be published</b> in the newspaper.
Notice of a preliminary hearing	PA	Reg. No. 23 §270.7(j)(7)	<b>Public notice of a preliminary hearing</b> which may be held by the Department for information purposes <b>shall be given at least 10 days before the hearing</b> in the newspaper having the largest circulation <b>in the county where the facility is located</b> or is proposed to be located.
Notice of permit action	PDP	Reg. No. 8 §§2.1.6, 2.1.7; 40 CFR 124.10(a)& (b)	<b>The Department shall give public notice</b> announcing that <b>a draft permit has been prepared</b> and that it shall allow at least 45 days for public comment.

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Methods of public notice	PDP	40 CFR 124.10(c)	<b>Public notice of draft permit action</b> by the Department <b>shall be given by mailing</b> a copy of the notice as per the 40 CFR 124.10(c) requirements which Arkansas has incorporated by reference at ADPC&E Reg. No. 23, Section 3.
Notice of a public hearing - contents and deadline for notice	PDP	Reg. No. 23 §270.7(j)(8); Reg. No. 8 §2.1.8(a)(3); <i>[8-7-217]</i>	<p><b>Public notice of a hearing</b> shall be given at least 45 days before the hearing in the newspaper having the largest circulation within the county where the facility is located or proposed to be located, as well as publishing a notice in the newspapers having the largest circulation within each county adjoining the affected county. This notice shall provide:</p> <ul style="list-style-type: none"> <li>- the time, date, and location of the hearing;</li> <li>- the purpose of the hearing; and</li> <li>- the name and address of the applicant and the location where is the facility is, or is proposed to be located;</li> <li>- the tentative recommendation of the Department;</li> <li>- the location(s) where the application, the ADPC&amp;E recommendations and all supporting information is available for public review; and</li> <li>- procedures for submitting public comments into the hearing record.</li> </ul> <p>(Note that with respect to commercial hazardous waste management facilities, 8-7-217 requires a 30-day notice of public hearing whereas Reg. No. 23 §270.7(j)(8) requires a 45-day notice.)</p>
Notice of a public hearing - method and mailing list	PDP	Reg. No. 8 §2.1.8(a)(1)	<b>Notice of the hearing</b> by certified mail (return receipt requested) shall also be <b>given to the permit applicant</b> , to all <b>persons who have filed a timely written request</b> for a public hearing, and to all <b>persons who have submitted public comments on the record</b> .
Notice of a public hearing - first class mail	PDP	Reg. No. 8 §2.1.8(a)(2)	<b>Notice of the hearing</b> must be sent by first class mail <b>to all persons who have requested advance notice of the public hearing</b> .

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<b>PUBLIC MEETING</b>			
Public meetings for the informal exchange of information	PDP	Reg. No. 8 §2.1.9	<b>The Department</b> , in its discretion, <b>may hold a public meeting</b> for the purpose of informally <b>exchanging information with the public</b> on a permitting decision.
<b>PUBLIC HEARINGS</b>			
Request for a preliminary public hearing	PA	Reg. No. 8 §2.1.5; Program Description, "The Permit Process", p. 57	<b>Any interested party desiring a public hearing</b> on an application for a permit application <b>must make a request</b> to the Department <b>within 10 days</b> of the publication date of the notice announcing that the permit application is administratively complete. Whether to have a hearing is within the discretion of the Department. If a hearing is held, all commenters, as well as the applicant, must be notified of the hearing by certified mail.
Preliminary public hearing for information purposes	PA	Reg. No. 23 §270.7(j)(7)	<b>Prior to drafting the permit</b> for any hazardous waste management facility, <b>the Department may hold a preliminary hearing</b> for information purposes in the area where the facility is located or is proposed to be located. The hearing may be held by giving no less than 10 days notice.
Commercial hazardous waste management facilities--public hearing is required before a permit is issued	PDP	Reg. No. 23 §270.7(j)(6), (j)(8), (j)(9); [8-7-217]	<b>The Department shall not issue a permit for a commercial hazardous waste management facility unless a public hearing is held.</b> This hearing shall be held in the area where the facility is located or is proposed to be located. A record of the hearing shall be made as part of the administrative record of each application for review by the Commission. Public notice of the hearing shall be given at least 45 days before the hearing.
Noncommercial hazardous waste management facilities--public hearing is required if a written objection is filed during the 45 day public comment period	PDP	40 CFR 124.10; Reg. No. 23 §270.7(j)(6), (j)(8), (j)(9)	<b>The Department shall not issue a permit for a noncommercial hazardous waste management facility unless it first gives a 45-day opportunity for public comment.</b> If written objection to the issuance of a permit is filed within the 45-day comment period, a public hearing shall be held in the area where the facility is located or is proposed to be located. A record of the hearing shall be made and retained as part of the administrative record of each application for review by the Commission. Public notice of the hearing shall be given at least 45 days before the hearing.

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<b>ADJUDICATORY HEARINGS</b>			
No provisions found			
<b>OTHER TYPES OF PUBLIC PARTICIPATION</b>			
Parties interested in a proposed site may request that qualified persons enter the site to conduct surveys and tests	PA	Reg. No. 23 §270.7(j)(5)	<b>The Director may authorize qualified persons</b> interested in a pending application <b>to enter upon the proposed site</b> , upon sufficient notice to the applicant, <b>and make such relevant surveys and tests</b> as the Director authorizes. All results of such surveys and tests will be made available to the Department and to the applicant, and all costs shall be borne by the party or parties requesting them.

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<b>SITING RESTRICTIONS AND PROHIBITIONS</b>			
Federal siting restrictions and prohibitions can be viewed at <a href="http://www.epa.gov/epacfr40/chapt-I.info/subch-I/">http://www.epa.gov/epacfr40/chapt-I.info/subch-I/</a> by selecting “Part 264 (Updated 1997) - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”. The regulatory requirements are in Location Standards at 264.18 in the document. (State regulations cannot be less stringent than the federal counterparts.)			
<b>GENERAL</b>			
Ability to prohibiting issuance of a permit		<i>[8-7-219(5)]</i>	No permit shall be issued for any new commercial hazardous waste treatment, storage or disposal facility unless there is evidence that the facility location is consistent with siting criteria established by ADPC&E.
<b>SOIL AND WATER</b>			
Location of a facility in the recharge zone of a sole source aquifer	PA	Reg. No. 23 §264.18(d)(4)	<b>The Department shall not issue a permit for a new hazardous waste management facility located in the recharge zone of a sole source aquifer</b> designated pursuant to §1424(e) of the Safe Water Drinking Act except where the applicant can affirmatively demonstrate and the Department specifically finds that the location of such a facility would not constitute a risk to human health or the environment.
Location of a landfill or surface impoundment on soil classified as vertisol	PA	Reg. No. 23 §264.18(e)(2)	<b>The Department shall not issue a permit for a hazardous waste landfill facility or surface impoundment in an area having a soil which would be classified as vertisol or as having a subgroup modifier of vertic</b> by the criteria of the USDA Soil Conservation Service.
Location of a landfill or surface impoundment on limestone or similar rock	PA	Reg. No. 23 §264.18(e)(3)	<b>The Department shall not issue a permit for a hazardous waste landfill facility or surface impoundment in an area where a stratum of limestone or similar rock of average thickness of 1 meter lies within 30 meters of the base of the proposed liner system.</b>

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Location of landfill or surface impoundment above a high water table	PA	Reg. No. 23 §264.18(e)(4)	<b>The Department shall not issue a permit for a hazardous waste landfill facility or surface impoundment</b> in an area in which the bottom of the landfill's or impoundment's liner system or in-place soil barrier is <b>less than 10 feet above the historically high water table</b> .
Proximity of facility to a private or public water supply	PA	Reg. No. 23 §264.18(e)(5)	<b>The Department shall not issue a permit for a hazardous waste landfill facility or surface impoundment</b> in an area where the proximity of a functioning <b>private or public water supply</b> in relationship to any active portion of the facility would constitute an unacceptable risk to public health or safety.
<b>SEISMIC CONSIDERATIONS</b>			
Placement of a facility over a fault	PA	Reg. No. 23 §264.18(a)	<b>Portions of new facilities</b> where treatment, storage, or disposal of hazardous waste will be conducted <b>must not be located within 61 meters of a fault</b> which has had displacement in Holocene time.
Placement of a facility over an active fault zone	PA	Reg. No. 23 §264.18(d)(1)	<b>The Department shall not issue a permit for a new hazardous waste management facility located in an active fault zone</b> except where the applicant can affirmatively demonstrate and the Department specifically finds that the location of such a facility would not constitute a risk to human health or the environment.
Placement of a landfill or surface impoundment over an area of high earthquake potential	PA	Reg. No. 23 §264.18(e)(1)	<b>The Department shall not issue a permit for a hazardous waste landfill facility or surface impoundment</b> located in an area <b>of high earthquake potential</b> .

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<b>FLOODING AND EROSION</b>			
100-year floodplain restrictions	PA	Reg. No. 23 §264.18(b)	<b>An existing facility in a 100-year floodplain</b> must be designed, constructed, operated, and maintained <b>to prevent washout of any hazardous waste</b> by a 100-year flood unless the owner or operator can demonstrate to the Director's satisfaction that the wastes can be safely removed before the flood waters can reach the facility.
A "regulatory floodway"	PA	Reg. No. 23 §264.18(d)(2)	<b>The Department shall not issue a permit for a new</b> hazardous waste management <b>facility in a "regulatory floodway"</b> (i.e., a floodway as adopted by communities participating in the National Flood Program managed by the Federal Emergency Management Administration and the Arkansas Soil and Water Conservation Commission) except where the applicant can affirmatively demonstrate and the Department specifically finds that the location of such a facility would not constitute a risk to human health or the environment.
New facilities cannot be located in a 100-year floodplain	PA	Reg. No. 23 §264.18(d)(3)	<b>The Department shall not issue a permit for a new</b> hazardous waste management <b>facility in a 100-year floodplain</b> except where the applicant can affirmatively demonstrate and the Department specifically finds that the location of such a facility would not constitute a risk to human health or the environment.
<b>AIR</b>			
No provisions found			
<b>DISTANCE LIMITATIONS/BUFFER ZONES</b>			
Placement of a facility over a fault	PA	Reg. No. 23 §264.18(a)	<b>Portions of new facilities</b> where treatment, storage, or disposal of hazardous waste will be conducted <b>must not be located within 61 meters of a fault</b> which has had displacement in Holocene time.

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Location near any occupied dwelling	PA	[8-7-223]; Reg. No. 23 §264.18(f)	<b>No permit shall be issued for the construction or operation of a new commercial hazardous waste landfill</b> if the active portions are <b>located within one-half mile of any occupied dwelling</b> , church, school, hospital or similarly occupied structure at the time of the initial permit application unless the applicant can demonstrate and the Department finds that a lesser distance will provide adequate margins of safety even under abnormal operating conditions.
Distance between active portions of facility and its property lines	PA	Reg. No. 23 §264.18(g)(1)	<b>No permit shall be issued for a facility where the distance between the active portions and the facility property line is less than 200 feet.</b>
Distance from active portions to public roads, pipelines and power lines	PA	Reg. No. 23 §264.18(g)(2)	<b>No permit shall be issued for a facility</b> where the active portion is <b>located less than 300 feet from</b> the right-of-way for a <b>public road; pipelines</b> carrying natural gas, fuel oils, or chemicals; water and wastewater lines; and <b>power transmission lines.</b>
Locating a high impact solid waste facilities within twelve miles of another high impact solid waste facility	PA	[8-6-1504(a)]	<b>No high impact solid waste management facility can be located within 12 miles of any existing high impact solid waste management facility.</b> This presumption can be rebutted under 8-6-1504(b) (see Arkansas' environmental equity/justice considerations below).
<b>OTHER HUMAN HEALTH CONSIDERATIONS</b>			
No provisions found			
<b>ENVIRONMENTALLY SENSITIVE AREAS</b>			
Endangered Species			No provisions found
Critical Habitats			No provisions found

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Wetlands	PA	Reg. No. 23 §264.18(d)(5)	<b>The Department shall not issue a permit for a new</b> hazardous waste management <b>facility in wetland areas</b> which are inundated or saturated by surface water or groundwater at a frequency and duration to support vegetation typically adapted for life in saturated soil conditions except where the applicant can affirmatively demonstrate and the Department specifically finds that the location of such a facility would not constitute a risk to human health or the environment.
Wild, Scenic or Recreational Areas			No provisions found
Approved Farmland Preservation Areas			No provisions found
Other			No provisions found
<b>OTHER RESTRICTIONS</b>			
Salt dome formations, salt bed formations, underground mines and caves	PA	Reg. No. 23 §264.18(c)	<b>The Department prohibits</b> the placement of any noncontainerized or bulk <b>liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave.</b>

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ENVIRONMENTAL JUSTICE CONSIDERATIONS			
No provisions found			

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### Arkansas Hazardous Waste Facility Siting Provisions

Topic	Stage <sup>1</sup>	State citation <sup>2</sup>	Provision
<b>ECONOMIC CRITERIA</b>			
Locating a high impact solid waste management facility if economic benefits can be demonstrated	PA	<i>[8-6-1504(b)]</i>	<b>The presumption against the siting of high impact solid waste management facilities can be rebutted</b> if it can be shown that there are incentives for the host community to accept the siting of the facility, such as: <ul style="list-style-type: none"> <li>! increased employment opportunities,</li> <li>! reasonable host fees,</li> <li>! contributions by the facility to the community infrastructure,</li> <li>! compensation to adjacent individual landowners for any assessed decrease in property values, or</li> <li>! subsidization of community services.</li> </ul>

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### Arkansas Hazardous Waste Facility Siting Provisions

Topic	Stage <sup>1</sup>	State citation <sup>2</sup>	Provision
<b>OTHER CRITERIA</b>			
Permit applications for high impact solid waste management facilities	PA	<i>[8-6-1503]</i>	<b>The Department shall not process any</b> application for a <b>permit for a high impact solid waste facility</b> until the affected local and regional authorities have issued definitive findings regarding the siting criteria set out in <i>8-6-1504</i> .
A presumption against the siting of high impact solid waste facilities within 12 miles of another high impact solid waste facility	PA	<i>[8-6-1504(a)]</i>	There shall be a <b>rebuttable presumption against permitting</b> the construction or operation of <b>any high impact solid waste management facility within 12 miles of any existing high impact solid waste management facility</b> . This presumption shall be honored by the ADPC&E, the regional solid waste management board, and any other governmental entity with permitting or zoning authority concerning the facility.
This presumption can be rebutted	PA	<i>[8-6-1504(b)]</i>	<b>The presumption of 8-6-1504(a) can be rebutted</b> if it can be shown that: <ul style="list-style-type: none"> <li><b>!</b> no other suitable site for the facility is available within the regional solid waste management district because of the restraints of geology or other factors, which are listed at <i>8-6-706(b)(2)</i>, or</li> <li><b>!</b> there are incentives for the host community to accept the siting of the facility such as increased employment opportunities, reasonable host fees, contributions by the facility to the community infrastructure, compensation to adjacent individual landowners for any assessed decrease in property values, or subsidization of community services.</li> </ul>

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